Promising basis for competition

by **Andrew Bailey,** Director, Corporate & Regulatory Affairs, Optus

Optus welcomes the Government's policy statement which outlines principles which will govern the telecommunications market from 1997. Optus believes that the framework represents a promising basis for the continued development of sustainable competition in telecommunications.

The details of the new regime, many of which remain to be clarified, will indicate how the new principles will work in practice. Optus' experience over the last few years suggests that effective safeguards in respect of anti-competitive behaviour will require particular attention.

In respect of pricing behaviour, the ACCC will need significant powers to limit scope for behaviour which could adversely impact on the ability of new entrants to compete.

These issues have recently been getting attention in the UK. There, reform proposals enhance OFTEL's ability to police anti-competitive behaviour and ensure fair play amongst competitors. OFTEL is proposing to place a new condition in British Telecom's licence aimed at the "maintenance of effective competition" and prohibiting behaviour which is likely to have the effect of unfairly preventing, restricting or distorting competition. This proposal recognises that as the complexity of the competitive environment increases and the forms of potentially anti-competitive behaviour grows, the regulator needs to be able to react both quickly and consistently.

Optus is concerned that the ACCC similarly be able to respond quickly and flexibly to allegations of anti-competitive conduct. This poses some difficult issues for the Government. The *Trade Practices Act* has proven to be somewhat unwieldy for quickly preventing anti-competitive conduct. Something more will thus be needed to give effect to the Government's intention of controlling anti-competitive carrier conduct (clause 24 in the Telecommunications Policy Principles).

Interconnect will continue to be a critical issue in the post-1997 environment. The Telecommunications Policy Principles may be read to imply some diminished regulatory distinction between carriers and service providers. Here again the Government will need to find the right balance between broadening out competition and ensuring that those underpinning the widespread delivery of competition to all Australians through infrastructure investment have the opportunity to earn adequate returns on their network investments.

Australia's interconnection regime has been widely seen as "world's best practice" in dealing with the problems which arise when an incumbent monopolist is required to connect the network of a new entrant. A prime feature of this regime has been the Ministerial Pricing Principles which have guided AUSTEL's arbitration role in the commercial negotiations between Optus and Telstra. Optus believes these pricing principles have continued relevance in a post-1997 regime as the ACCC picks up the administration of the access regime.❑

More players, more choice

by **Allan Horsley,**
Executive Director, Australian Telecommunications Users Group

The policy framework for an open competitive marketplace in the communications industry is now a reality.

Its purpose is to bring into the industry a greater number of players, provide an environment for fair and open competition and offer a wider range of choice to users in the form of products and services at substantially lower tariffs.

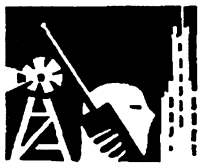
A new industry management arrangement operating in accordance with Australian national competition goals, within the Trade Practices Act (to be enhanced) and under the control of the Australian Competition and Consumer Commission (ACCC), is a key feature.

A characteristic of this arrangement is the requirement of the industry itself to play a major role in the development of codes of practice which will provide a basis for each carrier to prepare and lodge formal undertakings with the ACCC, a process which will operate through a new Telecommunications Access Forum.

The challenge for us all is to actively participate in this process and bring about an industry with an ethos appropriate to the Australian environment and with a proper and equitable balance between the supply and demand sides of the industry.

The competitive environment for the post '97 communications industry will ensure fair and open competition between a wide range of providers - large and small.

Anti-competitive conduct will not be tolerated and new powers given to the ACCC will provide for any player with substantial market power



to be required to file tariffs and offer services consistent with those tariffs. Also they will not be able to offer themselves more favourable treatment that they offer competitors or to users. Powers of direction will also be available to the ACCC to prevent anti-competitive behaviour.

To further support the fair and open competition policy, provision will be made for effective accounting separation within a carrier and for operational arrangements such as number portability, preselection, calling line identification, etc.

Access to the multi-vendor national network will provide for any-to-any connectivity with highly functional interconnection - a cornerstone of the policy statement. All carriers will have rights of and obligations to interconnect to all other carriers ensuring that anyone can connect to anyone regardless of location.

The concept of multiple access arrangements has been obviated.

Enhanced service to users are well addressed in the policy principles. The new concept of a standard telecommunications service is identified and its specification will grow.

A 64Kbps service delivered to the premises with the objective of expanding to perhaps 2Mbps as broadband network rollout proceeds, should be our objective.

Consumer protection safeguards, together with privacy, censorship, legal liability and tariff information requirements are clearly outlined.

The Government, with industry, must now quickly develop the legislation to bring about the policy objectives and in the process identify those matters which could immediately become part of industry operating arrangements.

Substantial process change or re-engineering is required, supported by effective management training, if Australia is to reap the benefits of the Information Age and enhance its position in the global community. ❑

Balancing all interests

by **Brian Perkins,** Chair, Service Providers Action Network

From the service provider perspective, the proposed regime for regulating telecommunications post-1997 appears to balance the interests of all industry players.

The biggest lesson for service providers from the 1991 *Telecommunications Act* was that there must be clear rules for access and interconnection backed up by pricing principles and dispute resolution mechanisms. Service providers, through the Service Providers Action Network (SPAN), will be scrutinising the draft 1997 legislation to ensure these problems are addressed.

The larger service providers will have to decide whether or not to pursue carrier status under the revised definition, which, in the "Telecommunications Policy Principles: Post 1997", is expressed to be "persons who control access to telecommunications facilities used to provide services to the public and of such significance that they should be subject to mandatory access undertakings that achieve any-to-any connectivity and/or open access for service providers". Significantly, this includes companies such as AAP Telecommunications Pty Ltd who may not necessarily own infrastructure, but operate a network through entering into long-term lease arrangements.

Certainly if - as is the case under the current *Telecommunications Act* - the carrier/carrier access regime is more effective than that for service provider/carrier interconnect, "borderline" service providers may consider the cost of the carrier licence fee and annual contributions for industry administration a worthwhile investment compared to the frustration of negotiating access and interconnection from bigger market players who they ultimately compete with in downstream markets.

The proposed mandatory access undertakings that carriers will be required to give to the Australian Competition and Consumer Commission (ACCC) will be based upon the broad principles of the newly enacted Part IIIA of the *Trade Practices Act 1974*. SPAN has expressed concerns about certain aspects of the Part IIIA access regime in submissions onthe draft legislation. The lack of time limits on the appeal process is of particular concern, and SPAN will be mindful of the need to have time limits on appeal processes under any telecommunications access regime, given the incentive for carriers to delay giving access in the form of monopoly rents.

The 1991 *Telecommunications Act* focused on promoting sustainable competition in emerging telecommunications markets. This had benefits for smaller industry players. Under the proposed post-1997 regime, the ACCC will have the power to direct a carrier with a substantial degree of market power to cease conduct which, in the ACCC view, substantially lessens or inhibits competition. This shift in focus will inevitably disadvantage smaller service providers.

The transfer of competition policy functions to the ACCC whilst merging residual functions of AUSTEL with the Spectrum Management Agency, will ensure that the industry continues to receive the individual technical regulation that is needed.

The continuation of the class licensing scheme for service providers is welcome, provided that there are improved arrangements for monitoring anti-competitive carrier conduct and for ensuring access on reasonable terms and conditions and cost-based pricing. It will be important to ensure that the wider definition of "carrier" does not force smaller service providers out of the market. ❑